

home which is necessary to restore their load-bearing ability;

(2) The repair of designated non-load-bearing portions, items or systems of the home, damaged by the structural defect, which make the home unsafe, unsanitary or otherwise unlivable (such as the repair of inoperable windows, doors and the restoration of functionality of damaged electrical, plumbing, heating, cooling, and ventilating systems); and

(3) The repair and cosmetic correction of only those surfaces, finishes and coverings, original with the home, damaged by the structural defect, or which require removal and replacement attendant to repair of the structural defect, or to repair other damage directly attributable to the structural defect. It is the intent of this section to ensure the repair of a covered home to a condition approximately the condition just prior to the defect, not to a like new condition. It does not require refinishing of all interior or exterior surfaces if only one or two surfaces are damaged. It does not cover personal property items, not a part of the structure, which are damaged by the defect or as a result of the defect. It excludes damage covered by a homeowner's casualty insurance policy.

*Warranty company* is an insurance company or other entity that provides insurance backing for an insured ten-year protection plan which, if the Plan issuer fails to meet its obligations to a covered homeowner, will assume the obligations and perform in accordance with the Plan's coverage contract with the homeowner.

**§ 203.201 Scope.**

Effective August 6, 1991, the provisions and requirements set forth in § 203.202 through § 203.209 apply to one- to four-family dwellings covered by HUD mortgage insurance (including family units in a condominium where the units are insured under subpart A of part 234 of this chapter).

**§ 203.202 Plan acceptability and acceptance renewal criteria—general.**

(a) For a Plan to be acceptable to HUD, it must assure that:

(1) If a builder, for any reason, fails to correct structural defects or con-

struction deficiencies in a property covered by an insured 10-year protection Plan during the term of any warranty offered by the builder on the property, the Plan issuer will effect the corrections in accordance with the terms of the Plan; and

(2) If a Plan issuer, for any reason, fails to effect correction of these deficiencies or defects, or otherwise fails to honor the terms of its coverage, its insurance backer or, if the Plan issuer is an insurance company, the insurance company itself, will effect the corrections or otherwise honor the terms of the Plan.

(b) In evaluating applications for renewal of Plan acceptance, HUD will take into consideration such reliable evidence as is made available to the Department of a Plan issuer's failure to fulfill its obligations. Where HUD has credible evidence of a Plan issuer's failure to correct covered homeowner problems, or there are justifiable homeowner complaints about untimely problem resolution by a Plan issuer, HUD will consider this as cause for termination of a Plan's acceptance and as grounds for initiation of sanctions against a Plan issuer or insurance backer in accordance with 24 CFR part 24. If HUD proposes to terminate a Plan's acceptance, the issuer of the Plan will be advised of the reason therefor, and the procedural safeguards of 24 CFR part 24 will apply.

(c) Unless renewed, Plan acceptance by HUD expires automatically on the second anniversary date of acceptance. The Plan issuer must apply for acceptance renewal at least two months, but no more than three months, in advance of expiration to avoid automatic acceptance termination. Prior acceptance of a Plan will be continued beyond the date of automatic acceptance termination only by a written notification to the Plan issuer and only if the delay is caused by a lack of timely HUD processing of a renewal application. HUD will not extend the expiration date of a prior Plan acceptance if the Plan issuer has negligently provided incomplete information with its renewal application.

(d) After a Plan has been accepted by HUD, there shall be no change in, or modification to, its provisions, or in its

insurance backers or insurance contract(s), without prior written HUD acceptance of such change or modification, except that changes mandated by other applicable laws may not require HUD's prior approval. A violation of this condition may be cause for termination of a Plan's acceptance, and may be grounds for initiation of sanctions against the Plan issuer in accordance with 24 CFR part 24. Insofar as practicable, HUD will respond to a Plan issuer's request for acceptance of a change within 30 days of receipt of the request. Plan acceptance by HUD will be for a two-year period.

(e) Requests for initial HUD acceptance or renewal of acceptance of a Plan should be made to the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Requests must be accompanied by information and documentation evidencing Plan compliance with § 203.204. Acceptability of Plans will be determined by the Deputy Assistant Secretary for Single Family Housing who will notify applicants of his or her determination. If a Plan is rejected, the applicant will be advised of the reason for rejection. The applicant may appeal the rejection to the Assistant Secretary for Housing, at the above address, stating specifically why the Plan should be approved. The Assistant Secretary (whose decision is final) will, within a reasonable time, advise the applicant whether the rejection will be upheld or reversed. Each HUD field office will be advised of Plans determined to be acceptable, or Plans that have been rejected.

(f) Existing Plans will be allowed a grace period of 9 months commencing from November 6, 1990 to make the necessary adjustments to comply with the provisions and requirements of § 203.200 to § 203.209.

(g) Each Plan issuer must submit a written certification addressed to the Deputy Assistant Secretary for Single Family Housing, 451 Seventh Street, SW., Washington, DC 20410, no later than three weeks before the anniversary date of the Plan's acceptance by HUD, that the insurance company backing its Plan is still an insurance carrier approved by the State insur-

ance commission (or the equivalent entity) in each jurisdiction in which the Plan is offered, or is still a Risk Retention Group meeting the criteria of § 203.208 of this part.

(Approved by the Office of Management and Budget under control number 2502-0343)

#### **§ 203.203 Issuance and nature of insured 10-year protection plans.**

(a) Plans may be issued:

(1) By a builder, warranty company, insurance company, or Risk Retention Group (see 15 U.S.C. 3901a(4)(A)-(H) (Supp. IV 1986); or

(2) By a State that guarantees the builder's performance and the State's continuing financial backing throughout the Plan's coverage period.

(b) All Plans must have insurance backing unless backed by the full faith and credit of a State.

(c)(1) Plans backed by the full faith and credit of a State must be in compliance with § 203.200 through § 203.202, § 203.204 through § 203.206, and § 203.209 to be acceptable to HUD. HUD will evaluate these Plans to ensure their compliance with these sections.

(2) HUD will not accept Plans backed by a State agency or a State insurance guaranty fund unless HUD is assured that the full faith and credit of the State is pledged to satisfy any and all obligations of the State agency or guaranty fund that may arise in connection with its financial backing of a Plan.

(d) The functions of a Plan issuer and an insurance backer may be performed by a single corporate entity.

#### **§ 203.204 Requirements and limitations of a plan.**

In addition to complying with the criteria set out in § 203.202 and § 203.205, for a Plan to be acceptable to HUD, it must meet the following requirements:

(a) A Plan must assure timely resolution of homeowners' complaints or claims covered under § 203.205. Warranties set forth in a Plan must comply with section 2301(a)(1)-(13) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301-2312) along with the requirements and criteria set out in this section.